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Commission or may be a regular employee of the Commission. Except as limited by section 181 of the Act or order of the Commission, the transcript will be available for inspection in the agency's public records system. Copies of transcripts are available to the parties and to the public from the official reporter on payment of the charges fixed therefor. If a hearing is recorded on videotape or other video medium, copies of the recording of each daily session of the hearing may be made available to the parties and to the public from the presiding officer upon payment of a charge fixed by the Chief Administrative Judge. Parties may purchase copies of the transcript from the reporter.

(c) Hearings will be open to the public, unless portions of the hearings involving proprietary or other protectable information are closed in accordance with the Commission's regulations.

(d) At the hearing, the presiding officer will not receive oral evidence that is irrelevant, immaterial, unreliable or unduly repetitious. Testimony will be under oath or affirmation.

(e) The presiding officer may question witnesses who testify at the hearing, but the parties may not do so.

(f) Each party may present oral argument and a final statement of position at the close of the hearing. Written post-hearing briefs and proposed findings are not permitted unless ordered by the presiding officer.

§ 2.1406 Initial decision—issuance and effectiveness.

(a) Where practicable, the presiding officer will render a decision from the bench. In rendering a decision from the bench, the presiding officer shall state the issues in the proceeding and make clear its findings of fact and conclusions of law on each issue. The presiding officer's decision and order must be reduced to writing and transmitted to the parties as soon as practicable, but not later than twenty (20) days, after the hearing ends. If a decision is not rendered from the bench, a written decision and order will be issued not later than thirty (30) days after the hearing ends. Approval of the Chief Administrative Judge must be obtained

for an extension of these time periods, and in no event may a written decision and order be issued later than sixty (60) days after the hearing ends without the express approval of the Commission.

(b) The presiding officer's written decision must be served on the parties and filed with the Commission when issued.

(c) The presiding officer's initial decision is effective and constitutes the final action of the Commission twenty (20) days after the date of issuance of the written decision unless any party appeals to the Commission in accordance with § 2.1407 or the Commission takes review of the decision sua sponte or the regulations in this part specify other requirements with regard to the effectiveness of decisions on certain applications.

§ 2.1407 Appeal and Commission review of initial decision.

(a)(1) Within fifteen (15) days after service of a written initial decision, a party may file a written appeal seeking the Commission's review on the grounds specified in paragraph (b) of this section. Unless otherwise authorized by law, a party must file an appeal with the Commission before seeking judicial review.

(2) An appeal under this section may not be longer than twenty (20) pages and must contain the following:

(i) A concise statement of the specific rulings and decisions that are being appealed;

(ii) A concise statement (including record citations) where the matters of fact or law raised in the appeal were previously raised before the presiding officer and, if they were not, why they could not have been raised;

(iii) A concise statement why, in the appellant's view, the decision or action is erroneous; and

(iv) A concise statement why the Commission should review the decision or action, with particular reference to the grounds specified in paragraph (b) of this section.

(3) Any other party to the proceeding may, within fifteen (15) days after service of the appeal, file an answer supporting or opposing the appeal. The answer may not be longer than twenty (20) pages and should concisely address

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the matters specified in paragraph (a)(2) of this section. The appellant does not have a right to reply. Unless it directs additional filings or oral arguments, the Commission will decide the appeal on the basis of the filings permitted by this paragraph.

(b) In considering the appeal, the Commission will give due weight to the existence of a substantial question with respect to the following considerations:

(1) A finding of material fact is clearly erroneous or in conflict with a finding as to the same fact in a different proceeding;

(2) A necessary legal conclusion is without governing precedent or is a departure from, or contrary to, established law;

(3) A substantial and important question of law, policy or discretion has been raised by the appeal;

(4) The conduct of the proceeding involved a prejudicial procedural error; or

(5) Any other consideration which the Commission may deem to be in the public interest.

(c) Once a decision becomes final agency action, the Secretary shall transmit the decision to the NRC staff for action in accordance with the decision.

Subpart O—Legislative Hearings

SOURCE: 69 FR 2273, Jan. 14, 2004, unless otherwise noted.

§ 2.1500 Purpose and scope.

The purpose of this subpart is to provide for simplified, legislative hearing procedures to be used, at the Commission's sole discretion, in:

(a) Any design certification rule-making hearings under subpart B of part 52 of this chapter that the Commission may choose to conduct; and

(b) Developing a record to assist the Commission in resolving, under § 2.335(d), a petition filed under § 2.335(b).

§ 2.1501 Definitions.

Demonstrative information means physical things, not constituting documentary information.

Documentary information means information, ordinarily contained in documents or electronic files, but may also include photographs and digital audio files.

§ 2.1502 Commission decision to hold legislative hearing.

(a) The Commission may, in its discretion, hold a legislative hearing in either a design certification rule-making under § 52.51(b) of this chapter, or a proceeding where a question has been certified to it under § 2.335(d).

(b) Notice of Commission decision—
(1) Hearing in design certification rulemakings. If, at the time a proposed design certification rule is published in the FEDERAL REGISTER under § 52.51(a) of this chapter, the Commission decides that a legislative hearing should be held, the information required by paragraph (c) of this section must be included in the FEDERAL REGISTER notice for the proposed design certification rule. If, following the submission of written public comments submitted on the proposed design certification rule which are submitted in accordance with § 52.51(a) of this chapter, the Commission decides to conduct a legislative hearing, the Commission shall publish a notice in the FEDERAL REGISTER and on the NRC Web site indicating its determination to conduct a legislative hearing. The notice shall contain the information specified in paragraph (c) of this section, and specify whether the Commission or a presiding officer will conduct the legislative hearing.

(2) Hearings under § 2.335(d). If, following a certification of a question to the Commission by a Licensing Board under § 2.335(d), the Commission decides to hold a legislative hearing to assist it in resolving the certified question, the Commission shall issue an order containing the information required by paragraph (c) of this section. The Commission shall serve the order on all parties in the proceeding. In addition, if the Commission decides that persons and entities other than those identified in paragraph (c)(2) may request to participate in the legislative hearing, the Commission shall publish a notice of its determination to hold a legislative hearing in the FEDERAL REGISTER and